

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-090276
	:	TRIAL NO. B-0805351-A
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
CONRAD BURNETT,	:	
Defendant-Appellant.	:	
	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

On July 3, 2008, Hamilton County Deputy Anthony Lange of the Regional Narcotics Unit (“RENU”) was on duty driving his cruiser in Cincinnati. Deputy Lange observed an automobile make a left turn without signaling. Lange began pursuit of the vehicle and observed the vehicle cross over a double-yellow line. At this point, Lange and his partner, who was driving another cruiser, decided to stop the vehicle. The vehicle’s license plate was checked, and it was discovered that the vehicle was a rental car. After the stop, while Lange and his partner were approaching the vehicle, the driver, defendant-appellant Conrad Burnett, informed Deputy Lange that he (Burnett) had an open warrant for his arrest. Additionally, neither Burnett nor his passenger could produce a driver’s license or a rental agreement for the vehicle.²

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² Burnett’s passenger produced New York State identification, but Deputy Lange could not recall whether it was a New York driver’s license or identification card.

Lange asked Burnett to step out of the vehicle while Lange researched Burnett's claim of an open warrant. Once the open warrant was confirmed, Burnett was handcuffed and placed in front of Lange's cruiser. Lange and his partner then proceeded to search the vehicle. Nothing of interest was found in the passenger compartment, but a search of the trunk revealed a 50-gallon trash bag filled with 20 one-pound bags of marijuana.

Burnett was charged with one count of trafficking in marijuana in violation of R.C. 2925.03(A)(2) and one count of possession of marijuana in violation of R.C. 2925.11(A). Prior to trial, Burnett filed a motion to suppress that the trial court overruled. Subsequently, Burnett pleaded no contest to both counts. The trial court found him guilty, merged the two counts, and sentenced Burnett to four years' confinement. Burnett has timely appealed to this court, asserting two assignments of error relating to his motion to suppress. We address Burnett's second assignment of error first.

In his second assignment of error, Burnett argues that the trial court erred when it held that Lange had probable cause to stop Burnett's vehicle. In support of his argument, Burnett testified that he was too far in front of Deputy Lange's vehicle, and that it was impossible for Lange to witness the traffic violations he claimed to have observed.

"When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence."³ A reviewing court then determines, *de novo*, whether the trial court

³ *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, at ¶8.

accurately applied the appropriate legal standard to the facts.⁴ When it determined in this case that Deputy Lange had probable cause to initially stop Burnett, the trial court relied on the testimony of Lange and believed him when he stated that he had personally witnessed Burnett committing the two traffic violations. After reviewing the complete record, we find no reason not to accept the trial court's findings in this regard, and we likewise determine that Deputy Lange's testimony was competent and credible. Because he witnessed Burnett committing two separate traffic violations, Lange had probable cause to stop the vehicle driven by Burnett. Burnett's second assignment of error is therefore overruled.

With respect to the first assignment of error, Burnett argues that the trial court erred when it determined that Lange had probable cause for a warrantless search of the vehicle Burnett was driving. Specifically, Burnett argues that the warrantless search of the vehicle made incident to his arrest was unconstitutional because police are allowed to search a vehicle incident to a recent occupant's arrest only if the person arrested is within reaching distance of the passenger compartment at the time of the search, or if it is reasonable to believe the vehicle contains evidence of the offense involved in the arrest.⁵ When he was handcuffed, Burnett was located in front of Lange's cruiser, outside reaching distance of the vehicle's passenger compartment. And because he was placed in custody on an outstanding warrant, Lange could not reasonably expect to find any evidence of the original offense in the vehicle.

The state does not argue that Lange's search of the vehicle's passenger compartment and trunk incident to Burnett's arrest was permitted under the United

⁴ Id.

⁵ *Arizona v. Gant* (2009), __ U.S. __, 129 S.Ct. 1710, 1723.

States Supreme Court's holdings in *Gant*⁶ and *New York v. Belton*.⁷ Rather, the state argues that the search was made as an inventory search of the vehicle prior to the vehicle's imminent impoundment. Inventory searches are considered an exception to the warrant requirement.⁸ They must be conducted "in good faith and in accordance with reasonable standardized procedure(s) or established routine."⁹

Deputy Lange testified that RENU had a policy that when a rental car was stopped in conjunction with a violation, and a rental agreement could not be produced, the vehicle was immediately impounded and taken to the Hamilton County Sheriff's Office, where an inventory search would be conducted. Subsequently, the vehicle would be returned to the rental car company. Lange further testified that the vehicle Burnett was driving would eventually have been impounded because neither Burnett nor Burnett's passenger could produce a copy of the rental agreement, because both admitted that they had not rented the car, and because Burnett could not produce a driver's license.

The events in this case are similar to those in *State v. Poole*.¹⁰ In *Poole*, the Eighth Appellate District held that a police department's policy of impounding a rental car was reasonable when the defendant-driver could not produce a rental agreement, could not produce a driver's license, and had an outstanding warrant for his arrest.¹¹ The court also held that the inventory search of the entire vehicle including the trunk, conducted prior to the towing of the car, was reasonable.¹²

⁶ Id.

⁷ (1981), 453 U.S. 454, 101 S.Ct. 2860.

⁸ *State v. Mesa*, 87 Ohio St.3d 105, 108, 1999-Ohio-253, 717 N.E.2d 329.

⁹ *State v. Hathman*, 65 Ohio St.3d 403, 1992-Ohio-63, 604 N.E.2d 743, paragraph one of the syllabus.

¹⁰ 2002-Ohio-5326.

¹¹ Id. at ¶23.

¹² Id.

Based upon Deputy Lange's testimony, we hold that the inventory search conducted in this case was reasonable and constitutional. Although Lange testified that it was RENU's policy to search the rental vehicle after it was towed, we conclude that the timing of the search was inconsequential, as the contents in the vehicle's trunk would have been discovered eventually. Therefore, Burnett's first assignment of error is overruled.

Although we have overruled each of the assignments of error, we note that the trial court failed to impose the mandatory fine for Burnett's third-degree-felony conviction for trafficking in marijuana.¹³ And because the record does not indicate that Burnett met the statutory prerequisites for avoiding the fine, the trial court's omission rendered the sentence void.¹⁴ We therefore vacate the sentence and remand the cause for resentencing only.¹⁵

In all other respects, the judgment of the trial court is affirmed.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DINKELACKER and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on March 3, 2010

per order of the Court _____.
Presiding Judge

¹³ See R.C. 2929.18(B)(1).

¹⁴ *State v. Fields*, 183 Ohio App.3d 647, 2009-Ohio-4187, 918 N.E.2d 204, at ¶18.

¹⁵ *Id.*